



OFFICE OF THE ATTORNEY GENERAL, STATE OF TEXAS
JOHN CORNYN

March 13, 2001

Ms. Julie J. Gannaway
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2001-0968

Dear Ms. Gannaway:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145172.

The Bryan Police Department (the "department") received a request for the employment application, promotions, awards, training, reprimands, complaints, disciplinary actions, qualifications, educational background and other information relating to a specified police officer. You state that you are releasing some responsive information. You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

You represent that the submitted information in Exhibit B is maintained in a personnel file by the department for its own use under section 143.089(g) of the Local Government Code and, therefore, is excepted under section 552.101 of the Government Code. Further, you ask whether a written reprimand that you have placed in the officer's civil service file is confidential under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. Section 143.089 of the Local Government Code contemplates two different types of personnel files,

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

one that the city's police department is required to maintain as part of the police officer's civil service file, and one that the city's police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). Section 143.089 of the Local Government Code provides in pertinent part:

(a) The director [of the police officers' civil service] or the director's designee shall maintain a personnel file on each . . . police officer. The personnel file must contain *any* letter, memorandum, or document relating to:

....

(2) any misconduct by the . . . police officer if the letter, memorandum, or document is from the employing department and *if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter.*

....

(g) A . . . police department may maintain a personnel file on a . . . police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a . . . police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the . . . police officer's personnel file.

Local Gov't Code § 143.089(a)(2), (g) (emphasis added). An officer's civil service file must contain any letter, memorandum, or document relating to misconduct that resulted in disciplinary action as contemplated by chapter 143. Subchapter D of chapter 143 of the Local Government outlines the disciplinary actions contemplated by chapter 143 and does not include a written reprimand. Further, this office has determined that a written reprimand is not a disciplinary action under chapter 143 and, therefore, the reprimand must be placed in the confidential department file. *See* Attorney General Opinion JC-0257 (2000). Because the written reprimand in Exhibit C is not the type of disciplinary action contemplated by chapter 143, the written reprimand must be placed in the department's personnel file and not the civil service file.

The Third Court of Appeals addressed the availability of information that is contained in the department's internal file pursuant to section 143.089(g). *See City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied). The court determined that section 143.089(g) makes confidential any records kept in a department's internal file. *Id.* (finding general legislative policy that allegations of misconduct against police officers and fire fighters not be subject to compelled disclosure unless they have been substantiated and resulted in disciplinary action). Accordingly, the submitted documents in Exhibits B and C are confidential under section 143.089(g) of the Local Government Code and must not be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

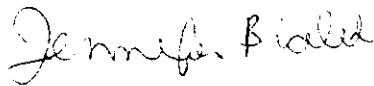
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB/er

Ref: ID# 145172

Encl: Submitted documents

cc: Mr. Kyle Hawthorne
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(w/o enclosures)